

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 400 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not? No @@ 2

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

STATE OF GUJARAT

Versus

ARVINDKUMAR LAXMICHAND

KHANDHAR

Appearance:

MS KATHA GAJJAR, A.G.P. for appellant

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 18/01/99

ORAL JUDGEMENT

(Per : Panchal, J.) :-

This is an appeal, which is filed by the State of Gujarat under section 54 of the Land Acquisition Act, 1894 read with section 96 of the Code of Civil Procedure, 1908, is directed against judgment and award dated October 1, 1997 rendered by the learned Assistant Judge, Surendranagar, in Land Acquisition Reference Case No.1/91.

2. The Executive Engineer, Amreli Irrigation Division, Amreli had proposed to the State Government to acquire lands of survey nos. 176/1, 176/2 and part of survey no.175 of village Noli for Sukhbhadar Irrigation Scheme. On receipt of proposal, necessary inquiries were made by the Government and the Government was satisfied that the above-referred to lands of village Noli were likely to be needed for the said public purpose. Accordingly, notification under section 4(1) of the Land Acquisition Act, 1894 ("the Act" for short) was issued which was published in Government Gazette on July 5, 1990. The respondent, who was owner of the lands, was served with notice under section 4(1) of the Act. On receipt of notice, he had filed objections against the proposed acquisition. After considering objections, Deputy Collector and Land Acquisition Officer had forwarded his report to the State Government as contemplated by section 5A(2) of the Act. On consideration of the report, the State Government was satisfied that the lands which were specified in the notification issued under section 4(1) of the Act were needed for Sukhbhadar Irrigation Scheme. Therefore, declaration under section 6 of the Act was made which was published in Official Gazette on November 22, 1990. Thereafter the respondent was served with notice under section 9 of the Act. The respondent claimed compensation at the rate of Rs. 300/- per Are. However, after considering the materials placed before him, the Deputy Collector and Land Acquisition Officer offered compensation to the respondent at the rate of Rs. 100/per Are by award dated February 27, 1991. At the time when the award was made, neither the respondent was

present, nor his Lawyer who represented him before the Land Acquisition Officer was present. No intimation as contemplated by section 12(2) of the Act was given by the Land Acquisition Officer. However, the acquitting body served a notice dated February 12, 1991 asking the respondent to collect the amount of compensation offered by the Collector. That notice was received by the respondent on March 19, 1991. On receipt of the notice, the respondent felt that the offer of compensation made by the Land Acquisition Officer was inadequate. He, therefore, made an application dated April 8, 1991 requiring the Land Acquisition Officer to refer the matter to the Court for the purpose of determination of compensation. Accordingly, reference was made to the District Court, Surendranagar, which was numbered as Land Acquisition Reference Case No. 1/91. In the reference application, the respondent pleaded that having regard to the market value of the surrounding lands as reflected in sale instances as well as in earlier award of the Court, compensation at the rate of Rs. 300/- per Are ought to have been awarded to him. The reference application was contested by the appellant vide written statement Exh.20. In the written statement, it was averred that having regard to the sale instances and other materials placed on record, the Land Acquisition Officer was justified in offering compensation for the acquired lands at the rate of Rs. 100/- per Are and, therefore, the reference application should be dismissed. It was also pleaded in the reply that the reference was time barred and should be rejected as such. In view of the rival assertion made by the parties, necessary issues for determination were framed by the Reference Court. In support of his claim advanced in reference application, the respondent examined himself at Exh.55. He also examined witnesses, (1) Kanabhai Ramsingbhai at Exh.59, (2) Ambabhai Bhimabhai at Exh.60, (3) Valabhai Ganabhai at Exh.62, (4) Savsibhai Somabhai at Exh.64, (5) Gordhanbhai Jadavbhai at Exh.66, and (6) Bipinbhai Vasrambhai at Exh.67, to substantiate his claim that he was entitled to compensation at the rate of Rs. 300/per Are. The respondent also produced earlier award of the Court at Exh.42 which was rendered in regard to part of survey no.175 of village Noli and wherein notification under section 4(1) of the Act was published in Government Gazette in the month of March, 1973 in order to justify his demand for higher compensation. The respondent also led oral evidence regarding cost of well situated in the acquired lands and pipelines which were laid therein. Neither oral nor documentary evidence was produced by the appellant to support the averments made in the written statement. On appreciation of evidence led by the

respondent, the Reference Court held that the earlier award rendered in relation to part of Survey no.175 of village Noli, was comparable and having regard to time lag between the notifications issued under section 4(1) of the Act, the respondent was entitled to compensation after considering reasonable rise in price of the lands acquired. The Reference Court, therefore, deduced that the respondent was entitled to compensation at the rate of Rs. 200/per Are. The Land Acquisition Officer had offered token compensation for waste land at the rate of Rs. 1/- per Are. It was noticed by the Reference Court that in the waste land also, a well was situated and, therefore, Reference Court held that the respondent was entitled to compensation at the rate of Rs. 5/- per Are for waste lands. The Reference Court further deduced that the respondent was entitled to grant of Rs. 7500/for Well as well as pipelines. The Reference Court took into consideration the principle laid down by the Supreme Court in the case of Officer on Special Duty (Land Acquisition) v. Shah Manilal Chandulal, 1996(2) GLR 626 and concluded that the reference was not time barred. In ultimate decision, the Reference Court held that the respondent was entitled to get compensation at the rate of Rs.200/- per Are for irrigated jirayat land and Rs. 5/- per Are for waste land as well as Rs. 7500/- towards Well and pipelines and was also entitled to statutory interest at the rate of 9% and additional compensation at the rate of 12% as well as 30% solatium on enhanced amount, by award dated October 1, 1997, which has given rise to the present appeal.

3. Ms. Katha Gajjar, learned A.G.P. submitted that the reference was time barred and, therefore, the impugned award deserves to be set aside. It was claimed that the earlier award of the Court produced at Exh.42 was not comparable at all and, therefore, the Reference Court was not justified in awarding compensation at the rate of Rs.200/- per Are. What was stressed by the learned Counsel for the appellant was that when the compensation of the acquired lands was determined on the basis that the lands acquired were agricultural lands, the Reference Court was not justified in awarding estimated construction costs of the Well as well as pipelines separately and, therefore, the impugned award deserves to be suitably motified.

4. Mr. P.S.Champaneri, learned Counsel for the respondent pleaded that earlier award was rendered in respect of part of survey No.175 of village Noli and as it was comparable, the Reference Court was justified in placing reliance on the same and awarding Rs. 200/- per

Are as compensation for irrigated jirayat lands. It was submitted by the learned Counsel for the respondent that the respondent had incurred expenditure of RS. 7500/for digging the Well as well as laying down the pipelines and, therefore, grant of Rs. 7500/- for Well and pipelines should not be disturbed by the Court in the present appeal. It was also emphasised that though no notice was served by the Land Acquisition Officer under section 12(2) of the Act, the acquiring body had served notice dated February 12, 1991 on the respondent calling upon him to collect the amount of compensation offered by the Land Acquisition Officer which was received by the respondent on March 19, 1991 and, therefore, reference application which was made on April 8, 1991 cannot be said to be time barred at all. The learned Counsel for the respondent further submitted that a just award has been passed by the Reference Court and the appeal filed by the State Government being without any merits, should be dismissed.

5. We have been taken through the entire record of the case by the learned Counsel for the parties. The plea that reference application was time barred has no substance and has no factual basis whatsoever. As mentioned earlier, the Land Acquisition Officer had made award on February 27, 1991. The record of the case does not indicate that at the time when the award was made, either the respondent or his learned advocate was present. It is not the case of the appellant that the respondent or his advocate was present when the award was made by the Land Acquisition Officer on February 27, 1991. Under the circumstances, the provisions of section 18(2)(b) of the Act would be attracted to the facts of the present case. The record does not show that any notice was served by the Land Acquisition Officer under section 12(2) of the Act. Admittedly, notice dated February 12, 1991 was served by the acquiring body on the respondent calling upon him to collect the amount of compensation offered by the Land Acquisition Officer. That notice was received by the respondent on March 19, 1991. This is evident from the averments made by the appellant in the written statement which was filed before the Reference Court. The reference application was submitted by the respondent on April 8, 1991. Even if it is assumed for the sake of argument that notice served by the acquiring body should be treated as notice served by the Land Acquisition Officer under section 12(2) of the Act, we find that reference application was submitted by the respondent on April 8, 1991 i.e. within six weeks from the date of receipt of notice. Therefore, it is difficult to hold that the reference application made by

the respondent was in any way time-barred. However, the notice served by the acquiring body cannot be treated as notice served by the Land Acquisition Officer as contemplated by section 12(2) of the Act and, therefore, the respondent was required to make application seeking reference within six months from the date of award of the Land Acquisition Officer. As noted earlier, the award was made on February 27, 1991; whereas the reference application was made on April 8, 1991 i.e. within six months from the date of award. Having regard to the admitted facts of the case, we are of the opinion that the reference application cannot be said to be time-barred at all and, therefore, the first contention raised by the learned Counsel for the appellant fails.

6. So far as award of compensation at the rate of Rs. 200/- per Are is concerned, it is relevant to note that part of survey No.175 of village Noli belonging to this very respondent, was acquired earlier for this very public purpose. Therein, the notification under section 4(1) of the Act was published in the month of March, 1973. It is well settled that earlier award of the Court with respect to same land and which has become final can be relied on for the purpose of ascertaining market value of the lands acquired subsequently. Reasonable rise in the price of the land can also be considered if there is time lag between the notifications issued under section 4(1) of the Act. When part of survey No.175 of village Noli itself was subject matter of earlier award, it cannot be said that the earlier award would not be comparable. The appellant did not adduce any evidence to indicate that part of survey no.175 which was earlier acquired and the lands which were acquired in the present case were different in any manner or lands acquired later on were inferior in quality. On the contrary, by examining himself and other witnesses, the respondent satisfactorily established that quality of the lands acquired earlier and the quality of the lands acquired in the present case was similar and the lands which were acquired earlier had also similar advantages as possessed by the lands acquired in the present case. It is relevant to notice that the award rendered in the earlier case, was subject matter of First Appeal No. 425/88 and the High Court awarded compensation to the respondent at the rate of Rs.100/- per Are for irrigated jirayat lands. In the earlier case, notification under section 4(1) of the Act was published in the month of March, 1973; whereas in the present case, notification under section 4(1) of the Act was published on July 5, 1990. Therefore, the Reference Court was justified in considering reasonable rise in price of land having

regard to time lag between the notifications issued under section 4(1) of the Act. On overall view of the matter, it cannot be said that the determination of compensation at the rate of Rs. 200/per Are for irrigated jirayat lands is in any manner excessive so as to warrant interference of the Court in the present appeal. The ascertainment of market value of the waste land is not shown to be erroneous in any manner and, therefore, we hold that the Reference Court was justified in determining the market value of the waste lands at the rate of Rs.5/- per Are.

7. It is now settled law that when water is being used from the Well for cultivation of land, no separate value could be granted towards cost of the Well and pipeline. This aspect is elaborately considered by the Supreme Court in the cases of (1) O.JANARDHAN REDDY AND OTHERS v. DEPUTY COLLECTOR, L.A. UNIT-IV, LMD, KARIMNAGAR, A.P. AND OTHERS, (1994)6 SCC 456, (2) P. RAM REDDY AND OTHERS v. LAND ACQUISITION OFFICER, HYDERABAD URBAN DEVELOPMENT AUTHORITY AND OTHERS, (1995)2 SCC 305, (3) STATE OF BIHAR v. MADHESHWAR PRASAD, (1996)6 SCC 197, and (4) STATE OF BIHAR v. RATANLAL SAHU, (1996)10 SCC 635. Accordingly, we hold that the respondent is not entitled to separate value of Rs.7500/towards costs of Well and pipelines. The said award, therefore, stands set aside.

For the foregoing reasons, the appeal partly succeeds. It is held that the respondent is entitled to compensation at the rate of Rs. 200/- per Are for the irrigated jirayat lands and Rs. 5/- per Are for waste lands. The respondent will not be entitled to compensation of Rs. 7500/- being the cost of Well and pipelines. The direction given by the Reference Court to the appellant to pay interest, additional compensation under section 23(1-A) of the Act and solatium to the respondent, is upheld. The appeal is allowed to the above-referred extent only, with no order as to costs. Stay granted earlier in Civil Application is hereby vacated. Office is directed to draw decree in terms of this judgment.

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